

United States District Court  
Southern District of Texas**ENTERED**

January 09, 2023

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

RAIL SCALE, INC., a Florida Corporation,	)	Civil Action No.: 4:21-cv-03698
	)	
Plaintiff,	)	<b>JURY TRIAL DEMANDED</b>
	)	
v.	)	
	)	
WEIGHING TECHNOLOGIES, INC., d/b/a	)	
WT RAIL, a Texas Corporation,	)	
	)	
Defendant.	)	
	)	

**FOURTH AMENDED SCHEDULING ORDER**

It is hereby **ORDERED**, after consultation with the parties, that the following schedule will apply in this case:

	<u><b>Current Dates</b></u>	<u><b>Agreed Proposed Dates</b></u>	
	January 26, 2022 (Passed)		<b><u>Scheduling Conference</u></b> The parties held a Fed. Rule Civ. P. 26(f) conference on this date over video conference.
	February 4, 2022 (Passed)		<b><u>Status Conference</u></b> The Court held a status conference on this date with all parties.
	March 4, 2022 (Passed)		<b><u>Parties to make Fed. Rule Civ. P. 26(a)(1) Initial Disclosures</u></b> Except disclosure of asserted claims and preliminary infringement contentions as discussed below.

1	March 18, 2022 (Passed)		<p><b>Comply with P.R. 3-1 and P.R. 3-2: Parties to make disclosure of asserted claims and preliminary infringement contentions.</b></p> <p><i>After this date</i>, it is necessary to obtain leave of court to add and/or amend infringement contentions, pursuant to Patent Rule (P.R.) 3-7.</p> <p><b>Join additional parties.</b> It is not necessary to file a motion to join additional parties before this date. Thereafter, it is necessary to obtain leave of court to join additional parties.</p> <p><b>Add new patents and/or claims</b> for patents-in-suit. It is not necessary to file a motion to add additional patents or claims before this date. Thereafter, it is necessary to obtain leave of court to add patents or claims.</p>
2	May 24, 2022 (Passed)		<p>Comply with P.R. 3-3 and 3-4: <b>Parties to serve preliminary invalidity contentions</b> and make document production. Thereafter, it is necessary to obtain leave of Court to add and/or amend invalidity contentions, pursuant to P.R.. 3-7.</p> <p>Add any <b>inequitable conduct allegations</b> to pleadings. Before this date, it is not necessary to file a motion for leave to add inequitable conduct allegations to pleadings. Thereafter, it is necessary to obtain leave of court to add inequitable conduct allegations to pleadings.</p>
3	September 15, 2022 (Passed)		Comply with P.R. 4-1: <b>Parties' exchange of proposed terms and claim elements needing construction.</b>
4	November 1, 2022 (Passed)		<p>Comply with P.R. 4-2: <b>Parties' exchange of preliminary claim constructions and extrinsic evidence.</b></p> <p><b>Privilege Logs</b> to be exchanged by parties (or a letter to the Court stating that there are no disputes as to claims of privileged documents).</p>
5	November 8, 2022 (Passed)		<p>Deadline to comply with P.R. 4-3: <b>Filing of joint claim construction and pre-hearing statement.</b></p> <p><b>Disclosure of parties' claim construction experts</b> &amp; service of FED. R. CIV. P. 26(a)(2) materials</p>

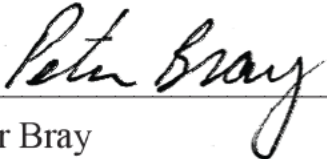
6	December 9, 2022	January 27, 2023	<p><b>Deadline for all parties to file amended pleadings (pre-claim construction).</b> It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. (It will be necessary to file a Motion for Leave to Amend after this deadline.)</p> <p><b>NOTE:</b> If the amendment would affect preliminary infringement contentions or preliminary invalidity contentions, a motion must be made pursuant to P.R. 3-7 irrespective of whether the amendment is made prior to this deadline.</p>
7	December 16, 2022	February 6, 2023	<p>Each party to provide name, address, phone number, and curriculum vitae for up to three (3) candidates for a <b>court-appointed special master</b> (<i>see</i> FED. R. CIV. P. 53) or <b>court-appointed expert</b> (<i>see</i> FED. R. EV. 706), with information regarding the nominee's availability for <i>Markman</i> hearing or other assignments as deemed necessary by the court. The parties shall indicate if they agree on any of the nominees. <b><u>(Only if court requests it –as amended by Judge Bray in previously signed order)</u></b></p>
8	December 16, 2022	February 6, 2023	<p>Deadline for parties (optional) to provide Court with <b>written tutorials concerning technology involved in patent in issue</b>. If a special master or court-appointed expert is hereafter selected, the parties will provide each tutorial to the master or expert.</p>
9	December 16, 2022	February 6, 2023	<b>Responses to amended pleadings due.</b>
10	December 16, 2022	February 6, 2023	<b>Discovery deadline on claim construction issues</b> ( <i>see</i> P.R. 4-4)
11	December 15, 2022	February 3, 2023	<p>Comply with P.R. 4-5(a): <b>the party claiming patent infringement</b> must serve and file a <b>Claim Construction Opening Brief</b> with its supporting evidence. The moving party is to provide the Court with 2 copies of the binders containing their Opening Brief and exhibits. If a special master or court-appointed expert has been appointed, the moving party must provide the Opening Brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits, to the special master or court-appointed expert.</p>

12	January 20, 2022	March 10, 2023	Comply with P.R. 4-5(b): <b>Responsive Brief and supporting evidence due to party claiming patent infringement.</b> The moving party is to provide the Court with two (2) courtesy copies of the Responsive Brief and exhibits. If a special master or court-appointed expert has been appointed, the nonmoving party must supply a copy of its Response on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits, to the special master or court-appointed expert.
13	January 27, 2022	March 17, 2023	Comply with P.R. 4-5(c): <b>Party claiming infringement shall file a Reply Brief and supporting evidence on claim construction.</b> The moving party is to provide the Court with two (2) copies of the Reply Brief and exhibits.  If a special master or court-appointed expert has been appointed, the moving party must provide the Reply Brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits, to the special master or court-appointed expert.  Parties to file a <b>notice</b> with the Court stating the <b>estimated amount of time</b> requested for the Claim Construction ( <i>Markman</i> ) Hearing. The Court will notify the parties if it is unable to accommodate this request.
14	February 17, 2023	April 7, 2023	Parties to submit <b>Claim Construction Chart</b> in WordPerfect 8.0 (or higher) format in compliance with P.R. 4-5(d).
15	March 31, 2023 (** This and Any Other Necessary Deadlines Pending Court Approval)	April 21, 2023 (** This and Any Other Necessary Deadlines Pending Court Approval)	<b>Claim Construction (Markman) Hearing at 10:00 a.m. – Location (video/live) TBD</b> <i>Hearing to be held live in the courtroom.</i>
16	June, 2023	July, 2023	<b>Court's Decision on Claim Construction (Markman Ruling)</b> <u><b>(If ruling is late, parties may seek amendment of remaining dates in Scheduling Order.)</b></u>
	February 27, 2023*	<b>TBD**</b>	Status Conference (*subject to the Court's calendar)  **To be continued by Judge in accordance with schedule

	March 6, 2023	TBD**	Submit remaining schedule for items set forth below.
17	TBD	TBD	<b>Deadline for final infringement contentions and to amend pleadings on infringement claims</b> <b>NOTE:</b> Except as provided in P.R. 3-6, if the amendment would affect preliminary or final infringement contentions, a motion must be made under P.R. 3-7 irrespective of whether the amendment is made before this deadline.
18	TBD	TBD	<b>Deadline for final invalidity contentions and to amend pleadings on invalidity claims.</b> <b>NOTE:</b> Except as provided in P.R. 3-6, if the amendment would affect preliminary or final invalidity contentions, a motion must be made under P.R. 3-7 irrespective of whether the amendment is made before this deadline.
19	TBD	TBD	Comply with P.R.3-8. <b>All parties furnish documents and privilege logs pertaining to willful infringement.</b>
20	TBD	TBD	<b>Date for designation of expert witnesses on non-construction issues on which the party has the burden of proof ("BOP") and service of expert witness reports.</b> [Refer to Fed. Rules of Civil Proc. for information required.]
21	TBD	TBD	<b>Date for designation of responsive expert witnesses on non-claim construction issues on which party does <i>not</i> have BOP, and service of responsive expert witness reports.</b> [Refer to Fed. Rules of Civil Proc. for information required.]
22	TBD	TBD	<b>Discovery Deadline on all issues.</b>  <b><u>(If ruling is late, parties may seek amendment of remaining dates in Scheduling Order.)</u></b>
23	Motions due: <b>TBD</b>  Responsive Briefs due: <b>TBD</b>  Reply Briefs due: <b>TBD</b>	Motions due: <b>TBD</b>  Responsive Briefs due: <b>TBD</b>  Reply Briefs due: <b>TBD</b>	<b>Dispositive and Non-Dispositive Motions and Briefing deadlines</b>

Do NOT file discovery motions. Should a discovery issue arise, the parties shall file a joint statement not exceeding five pages describing the nature of the dispute. A hearing will be set shortly after the statement is filed.

SIGNED on this 9<sup>th</sup> day of Jan, 2023.

  
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Peter Bray  
United States Magistrate Judge